

**City of Warwick Planning Board
Meeting Minutes**

Wednesday, April 13, 2011

Members Present: John J. Mulhearn Jr , Chairman
Philip Slocum
Thomas Kiernan
Sue Stenhouse
James Desmarais
Vincent Gambardella

Members Absent: Leah Prata
Cynthia Gerlach

Also in attendance: Diana Pearson, Solicitor

Chairman Mulhearn called the meeting to order at 6:02 P.M.

On the motion of Ms. Stenhouse, seconded by Mr. Slocum, the Planning Board voted unanimously to approve the March, 2011 meeting minutes.

Public Informational Meeting

Major Land Development Project/Subdivision

King Street & High Street/PDR-L

Applicant: Earl W, Judy, David & Susan Sandin
Paul & Denise Lavoie
Location: 51 King Street & 51-53 High Street
Assessor's Plat: 274
Lot(s): 105, 248, & 256
Zoning District: A-7 Residential, within an existing Historic Overlay District
Proposed Zoning: A-7 with PDR-L Overlay, within an existing Historic Overlay District
Land Area: 23,560 square feet
Surveyor: Ocean State Planners, Inc.
Ward: 8

The applicants, Mr. Earl Sandin of 51 King Street and Mr. Paul Lavoie of 3 Sugar Bush Trail, Coventry, and Attorney Dan Flaherty with offices at 33 College Hill Road, were present for the application.

Mr. Flaherty represented the project for the Applicant and requested Master Plan approval of a Major Land Development Project and a recommendation to the City Council for a Zone Change, from A-7 Residential within an existing Historic Overlay District to A-7 with a PDR-L Overlay within an existing Historic Overlay District, of a pre-existing 2-unit dwelling on a lot with less than required land area and front yard setback.

Mr. Flaherty stated that this application is proposed to correct a mistake that happened over thirty years ago. Mr. Flaherty explained that Mr. Sandin owned three abutting lots since he reached adulthood. In 1980, he sold an 8,246 square foot lot (256) to a builder, intending to keep lot 248. Mr. Flaherty presented a purchase and sales agreement indicating that Mr. Sandin intended to convey 8,246 square feet of land. An application to the Zoning Board of Review was prepared and presented by the Builder, indicating the parcel for development was both lots 105 and 256. This application was signed by Mr. Sandin, but Mr. Sandin did not testify at the Zoning Board hearing. After receiving Zoning Board approval, the Builder applied for a building permit, with both lots as represented to the Zoning Board. In 2010, the new owner of lot 256, Mr. Lavoie, was doing a title search on the property and discovered that it was not built as represented. Mr. Flaherty stated that this application is to correct this mistake by merging lots 105 and 248 and to legitimize lot 256 as a two family. The applicants are also asking for a new zoning classification for lot 256, but that everything will look the same as it has looked for that last thirty years.

Being no questions or comments from the Planning Board, a motion was made by Mr. Slocum to open the public hearing. The motion was seconded by Mr. Kiernan. All voted in favor. Being no questions or comments, a motion was made to close the public hearing by Mr. Slocum, seconded by Mr. Gambardella, with all voting in favor.

Being no other questions or comments, the Planning Board then heard the Planning Department's findings and recommendation.

The Planning Department found the proposal to be generally consistent with Article 1 "Purposes and General Statements" of the City's Development Review Regulations; and:

1. That the property consists of three lots containing two (2) - 2-unit dwellings; Assessor's Plat 274, Assessor's Lot 256 consists of one (1) - 2-unit dwelling on a lot totaling 8,246 square feet of land area, located at 51-53 High Street (Lavoie Property) and Assessor's Plat 274, Assessor's Lots 105 & 248 that contains one (1) - 2-family dwelling on two (2) lots totaling 15,314 square feet of land area located at 51 King Street (Sandin Property).
2. That the existing 2-unit dwelling at 51 King Street is located on AP 274 AL 105 & 248 (Sandin Property) and has been determined to be a legal use established through Certificate of Use & Occupancy No. 618-05, dated May 6, 2005.
3. That in 1980, Sandin, (AP 274, AL 105 & 248-51 King St.) entered into a purchase and sales agreement with Fashion Homes to sell an 8,246 square foot portion of abutting lot AP 274, AL 248 located on High Street.

4. Concurrently, Sandin (AP 274 Lot 105 & 248-51 King St.) applied to the Zoning Board of Review proposing a 2-unit dwelling on AP 274, AL 248 on High St. The Zoning application and Fashion Homes' testimony before the Zoning Board of Review referenced a 10,890 square foot lot, even though the Purchase and Sales agreement was for an 8,246 square foot portion of AP 274, AL 248.
5. That the Zoning Board of Review issued an approval, Petition No. 4676, to build a 2-unit dwelling located at AP 274, AL 248, 51-53 High Street on a 10,890 square foot lot.
6. That Fashion Homes applied for a building permit to build a 2-unit dwelling on a 10,890 square foot on AP 274, AL 248.
7. That in 1981, Sandin, sold/deeded a portion of AP 274 AL 248 on High Street to Fashion Homes. The City of Warwick Tax Assessor's Office upon receiving the aforementioned deed, by virtue of a "Lot Cut" created AP 274, AL 256 an 8,246 square foot lot for the new 2-unit dwelling and reduced the remaining portion of AP 274 AL 248 to a 2,644 square foot lot.
8. That in 2010, the new property owners, Lavoie, of AP 274, AL 256, 51-53 High St, applied to refinance their home and were told that the property was not properly zoned for a 2-unit, as it did not conform to the Zoning Board Approval, Petition No. 4676, and it did not conform to the minimum standards of the 2-unit dwelling which requires a minimum land area of 10,500.
9. That the proposal is to receive a City Council Zone change to PDR-L of an existing 2-unit dwelling on a non-conforming lot and that no new construction is proposed.
10. That the proposed 2-unit dwelling, on an undersized lot, is not in compliance with the standards and provisions of the City's Zoning Ordinance, therefore, requires a City Council Zone Change to A-7 with a PDR-L Overlay, within an existing Historic Overlay District with variances for less than required land area and front yard setback from the existing structure.
11. That public sewer and water are available to the property.
12. That there will be no significant negative environmental impacts from the proposed development.
13. That the development will not result in the creation of individual lots with such physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable.
14. That the proposed development possesses adequate access to a public street.

The Planning Department recommendation was to grant Master Plan Approval, with the following stipulations:

1. That the Applicant shall receive a City Council Zone Change to A-7 with a PDR-L Overlay within an existing Historic Overlay District, with variances for less than required land area and front yard setback from the existing structure.
2. That the Applicant shall receive Preliminary and Final Approval from the Planning Board.
3. That the Applicant shall record a Record Plat merging AP 274; AL 105 and 248 as part of the Final Approval.

On the motion of Mr. Slocum, seconded by Ms. Stenhouse, the Planning Board voted unanimously to formally adopt the Planning Department's findings and to grant Master Plan approval, with the Planning Department's recommended stipulations.

Chairman Mulhearn called for a second motion on the zone change recommendation to the Council for the project. The Planning Departments finding and recommendation were accepted as part of the record, and were as follows:

The Planning Department found the proposed zone change to be in general compliance with the City's Comprehensive Plan, including the Goals and Policies Statement, the Implementation Program, the Land Use Element and the Housing Element.

The Planning Department also found the proposed zoning amendment to be generally consistent with the following purposes of the City's Zoning Ordinance, as presented in Section 100, "Title and Purpose."

103.1 Promote the public health, safety and general welfare of the City.

103.2 Provides for a range of uses and intensities of use appropriate to the character of the City and reflect current and future needs.

103.3 Provides for orderly growth and development, which recognizes:

- A.) The goals and patterns of land use contained in the Comprehensive Plan of the city of Warwick.
- E.) The availability and capacity of existing and planned public and/or private services and facilities.
- F.) The need to shape and balance urban and suburban development.

103.5 Provide for the protection of the natural, historic, cultural, and scenic character of the city or areas therein.

103.8 Promote a balance of housing choices, for all income levels and groups, to assure the health, safety and welfare of all citizens and their rights to affordable, accessible, safe, and sanitary housing, including opportunities for the establishment of low and moderate income housing.

Zone Change Recommendation

The Planning Department did not condone the past actions of the property transfer that created the non-conformity. However, the Planning Department recognized that the Lavoie's AP 274, AL 256-51-53 High St. were harmless in the creation of this hardship and found the proposal to be generally consistent with the surrounding area and that it will not increase the overall density of the development. The Planning Department recommendation was to forward a favorable recommendation to the City Council for the requested Zoning Amendment, with the following stipulations:

1. That the Applicant shall receive Preliminary and Final Approval from the Planning Board.
2. That the Applicant shall record a Record Plat merging Assessor's Plat 274; Assessor's Lots 105 and 248 as part of the Final Approval.

A motion was made by Mr. Desmarais to accept the Planning Departments findings and recommendation and to forward a favorable recommendation to the City Council for the requested zone change. The motion was seconded by Ms. Stenhouse. All voted in favor, none opposed.

Public Hearing

Major Land Development Project

Norwood Estates

Applicant:	North End Realty LLC.
Location:	247 Sargent Street & Cherry Street
Assessor's Plat:	297
Lot(s):	232, 233, 234 & 290 through 296
Zoning District:	Residential A-7
Land Area:	1.69 acres (includes abandoned portion of Maple Street)
Number of lots:	6
Engineer:	SFM Engineering Assoc.
Ward:	2

Mr. Scott Moorehead, PE, SFM Engineering; represented the applicant, North End Realty, LLC, and requested a combined Master Plan/Preliminary Approval to subdivide ten (10) lots to create six (6) new lots, one (1) lot with an existing dwelling and five (5) new lots for development, in a Residential A-7 Zoning District.

Mr. Moorehead stated that there will be no extension of the road involved for the creation of the new lots, that the existing dwelling will remain on a lot, and that three of the new lots will front on Cherry Street and two new lots will front on Sargent Street.

Mr. Moorehead testified that public sewer and water are available to the site. Mr. Moorehead stated that the Applicant has reviewed the Planning Department's stipulations and has no objections.

Ms. Stenhouse asked Mr. Moorehead about the irregular shape of one of the lots and if this is a cause for concern. Mr. Moorehead responded that the triangular shape of the lot is due to the configuration of the parcel and that all of the lots have access to a paved portion of the street. Mr. DePasquale further explained that while the Development Regulations do discourage irregularly shaped lots, this is due to existing physical constraint and that even though one lot is not regularly shaped, the project is generally consistent with the Regulations.

Being no other questions or comments from the Planning Board, a motion was made by Mr. Slocum to open the public hearing. The motion was seconded by Mr. Desmarais. All voted in favor. Chairman Mulhearn asked for comments from interested parties.

Mr. Thomas Morgan, 259 Sargent Street, testified that his driveway abuts a section of Cherry Street and he is concerned about any proposed widening of Cherry Street. He stated the following concerns: that kids speed on this street already and that any widening will make this worse and that the irregular pavement width will be a safety issue. Mr. Moorehead responded that there will be no widening of Cherry Street that the proposal only includes widening of Sargent Street.

Mr. Cliff George, 270 Sargent Street stated concerns about sewers and explained that the area is having problems already. Chairman Mulhearn responded that the Planning Department's stipulations include comments from the Sewer Authority and that these will be part of the record. He continued that the Developer will need to contact the Sewer Authority and will be subject to the incorporated stipulations and that everybody in the area will be on the same page and that adding this development does not worsen the situation.

Violet Major, 273 Sargent Street stated concerns about traffic in the area and stated she would like to see a stop sign at the end of Cherry Street. Mr. DePasquale acknowledged the comment but stated that the Planning Board has no authority over stop signs, that it is the purview of the City Council. At Mr. DePasquale's request, Ms. Stenhouse reviewed the process for requesting a stop sign from the City Council. It is as follows, the constituent should contact their council person. The council person requests that the police department conduct a traffic study. Based on this information, the police department will make a recommendation to the council person about what action is necessary.

If warranted, the council person puts through an ordinance with the City Council regarding a stop sign.

Ms. Major then asked about a street sign. Mr. Hindinger responded that the Public Works Department can put up a street sign.

Mr. Robert McAllister, 21 Camp Yawgoo Road, Rockville, RI stated that he had concerns with the lack of a cul-de-sac for the project.

He testified that he had proposed a similar project and was told that he could not construct a street without a cul-de-sac for emergency vehicle access and that it appeared that this policy was being indiscriminately applied.

Chairman Mulhearn stated that he did not have an application from Mr. McAllister before the Board at this time so he was unable to comment on his concern. Mr. Mulhearn stated that in this situation, it is an existing, improved street which already provides access to dwellings and that the Fire Department had reviewed this proposal and had no objections because it is an existing condition.

Mr. John McDonagh, 263 Sargent Street, agreed that the condition on Sargent Street is dangerous, that vehicles can't turn around and end up backing out onto Cherry Street. He explained that there is no where for larger vehicles, like garbage trucks or delivery vans, to turn around.

Chairman Mulhearn stated that the application had been reviewed and that it conforms to regulations and that the Board relies on the findings and recommendation, which have been created by City Departments after review of the proposal. He agreed that no one disputes what the area residents are saying, but that this is a preexisting condition and if the Developer builds houses or not, the condition is still the same.

Mr. DePasquale stated that the Board has no legal authority to mandate that the Developer build a 50' cul-de-sac.

Ms. Major stated that it is already dangerous and that an addition five (5) new houses will make it worse.

Chairman Mulhearn asked if there was anyone else present to speak on the project. Being no other questions or comments, a motion was made to close the public hearing by Ms. Stenhouse, seconded by Mr. Slocum, with all voting in favor.

Being no additional questions or comments, the Planning Board then heard the Planning Department's findings and recommendation.

The Planning Department found the proposal to be generally consistent with Article 1 "Purposes and General Statements" of the City's Development Review Regulations; and:

- 1) That the subject property is located along, Sargent Street & Cherry Street, and is identified as Assessor's Plat: 297; Assessor's Lot: 232, 233, 234, & 290 through 296.
- 2) That the property consists of ten (10) lots totaling 73,595 square feet and is currently zoned Residential A-7.
- 3) That the applicant proposes to create six (6) lots; one (1) 7,616 square foot lot with an existing dwelling; and five (5) new lots for development.
- 4) That all lots as proposed will conform to the requirements of the Residential A-7 Zoning District.
- 5) That the proposed development is generally consistent with the Comprehensive Community Plan.
- 6) That the proposed development is in compliance with the standards and provisions of the City's Zoning Ordinance.
- 7) That there will be no significant negative environmental impacts from the proposed development.
- 8) That the development will not result in the creation of individual lots with such physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable.
- 9) That the proposed development possesses adequate access to a public street.

Planning Department Recommendation

The Planning Department's recommendation was to grant a combined Master Plan/Preliminary Approval, with the following stipulations:

1. The proposed width (*24-feet minimum as stipulated by the Planning Department during the initial review and as shown on Sheet 2 of 3 of this Preliminary Plan submission*) of Sargent Street shall be resurfaced with 1½ inches of pavement from the northerly edge of Cherry Street north to the end of the existing improved travel way (*approximately 275-feet*).
2. That the Developer shall coordinate reconstruction of Sargent Street upon completion of utility installation with the Warwick Sewer Authority, after trench patch has settled for at least 90 days. The Developer shall use sawcuts and create smooth transitions between existing and new pavement.

3. That the intersection of Maple Street and Cherry Street shall be resurfaced with 1½ inches of pavement for the entire width, starting at the southernmost sawcut on Maple Street (*approx. 35' south of the sewer manhole at the intersection*) to the easternmost sawcut on Cherry Street (*approx. 55' east of said sewer manhole*). Note: two small sawcuts for the water services to lots 4 & 5 may be patched as shown on the site plans. The Developer shall use sawcuts and create smooth transitions between existing and new pavement.
4. All existing driveway aprons shall be reviewed to ensure that there are no grading issues that will create pooling.
5. That the existing overhead wire to the existing dwelling on Record Lot 3 shall be relocated.
6. That the Developer shall meet with the Warwick Sewer Authority to have the sewer service extended to the property and that standard inspection fees shall apply.
7. That the Developer shall provide a bond for the connection of the existing dwelling (Record Lot 3) to sewers, prior to the recording of the Final Record Plat. Alternatively, the Developer may connect the existing dwelling (RL3) to sewers, prior to the recording of the Final Record Plat.
8. That the proposed dwellings shall be connected to sewers, prior to the issuance of a CO.
9. That the Developer shall install (13) thirteen 2-2½ inch caliper trees, Cleveland Select Flowering Pear (*Pyrus Calleryanna*), within the City right of way, one for every 50 feet of frontage. The Developer shall loam and seed the remaining areas within the City Right-of-Way. All plantings shall comply with the American Nurseryman and Landscape Association Standards (ANSI Z60.1-2004).
10. That the Developer shall provide a Performance Bond for the roadway improvements.
11. That the applicant shall dedicate a “fee-in-lieu of open space” equal to five (5) lots to the City of Warwick for Recreational District 5, as presented in the Warwick Comprehensive Plan Recreation Element, prior to recording the Final Plan

On the motion of Mr. Kiernan, seconded by Ms. Stenhouse, the Planning Board voted unanimously to formally adopt the Planning Department’s findings and to grant a combined Master Plan/Preliminary Approval, with Final Approval to be before the Board, upon compliance with the Planning Department’s recommended stipulations.

Public Meeting

Request for an Amendment to the City's Zoning Ordinance

Section 906.3 entitled “Standards for Relief” Subsection (c) subtitled “Special Use Permit”

Applicant: City of Warwick
Location: 3275 Post Road

Amend Zoning Ordinance: Section 906.3(C) (2)(ii)

Chairman Mulhearn stated that the Board members had reviewed the information provided by the Planning Department and accepted the information and recommendations as part of the record. This read as follows:

The Warwick City Council desires to amend the Warwick Zoning Ordinance in particular section “906.3” entitled “*Standards for Relief*” subsection (c) subtitled “*Special Use Permit*”. The proposed amending language would refine an existing statute in the zoning code that permits in certain cases and with limitation, the granting of “Dimensional Variance” in combination with a “Special Use Permit” (SUP).

Background

A full understanding of the instant request begins with a brief chronology of events initiated by a Rhode Island Superior Court ruling wherein the Court admonished the Warwick Zoning Board of Review for their continued approval of Special Use Permits (SUP) in combination with requests for dimensional variances. The Court found that a use granted by Special Use Permit (SUP) was a conditional use subject to full compliance with all the dimensional standards of the Zoning Ordinance, without deviation.

Subsequent to this Court ruling the City ceased accepting zoning applications for a combined (SUP) and dimensional variance. This zoning restriction adversely affected many owners of pre-existing non-conforming commercial properties who for years enjoyed business uses that required both a SUP and a dimensional variance.

Some time after the local restriction was enacted the Rhode Island General Assembly passed amended language allowing local communities at their discretion to amend their Zoning Ordinance to permit the granting of a (SUP) in combination with a dimensional variance.

On May 18, 2010 the Warwick City Council aware of the new state law, passed their own Ordinance, PCO-38-09, amending the local zoning code to allow limited dimensional deviation with (SUP) for commercial properties that abut Residential or Open Space zones with a limitation that the requested dimensional relief could not exceed 50% of specific dimensional regulations.

This regulation became known as the 50% rule. Also included in PCO-38-09, and an important part of understanding the instant request, was an exemption provision for commercial properties abutting other non-residentially zoned properties.

In application, PCO-38-09 (2010) required commercial properties adjacent to the AMTRAK Northeast Rail Corridor to conform to the 50% rule because many sections of the AMTRAK rail corridor are actually zoned residential, a peculiar zone change carryover from the City's 1988 Comprehensive rezoning initiative.

The end result is that many long standing commercial properties/businesses that are adjacent to the railroad right-of-way are not included within the commercial exemption provision included in the PCO-38-09 (2010) and were found to be noncompliant with the newly established "50% rule" applied to commercial properties abutting residential districts.

Proposal

The proposed Amendment seeks to rectify this anomaly by adding an exemption to section "906.3" (c) for commercial properties that "*directly abut the Amtrak Northeast Rail Corridor (NEC), irrespective of the zoning classification of the rail corridor*". The change, if approved, would allow commercial property owners abutting the Amtrak Northeast Rail Corridor to seek a SUP and dimensional variance through the Zoning Board of Review.

Planning Department Findings

The Planning Department found the proposed Zoning Amendment to be in compliance with the City's Comprehensive Plan including the Goals and Policies Statement, the Implementation Program, the Land Use Element and the Economic Development Element.

The Planning Department reasoned that extending the existing zoning exemption to commercial properties abutting the AMTRAK Northeast Rail Corridor would provide for equitable resolution considering that the characteristics of a railroad use is more similar to the intensity found within the exempted commercial zone than that of a residential district. Furthermore, the Planning Department finds that approving the instant amendment would not deviate from the original intent of the 50% legislation; to reduce land use conflicts by buffering residential properties from commercial uses, because commercial businesses would be located on the opposite side of a 60' wide rail corridor, which is a further setback than the 40' required by the 50% rule, providing adequate separation between uses.

The Planning Department's found that without this amendment, a property owner with commercial property abutting the AMTRAK corridor may suffer an unreasonable and unnecessary impediment to development that will negatively impact the overall economic interests of the City.

The Planning Department found the proposed Zoning Amendment to be generally consistent with the following purposes of the City's Zoning Ordinance as presented in Section 100 "Title and Purpose":

- 103.1 Promote the public health, safety and general welfare of the City.
- 103.2 Provide for a range of uses and intensities of use appropriate to the character Of the city and reflects current and future needs.
- 103.3 Provides for orderly growth and development, which recognizes:
 - (A) The goals and patterns of land use contained in the comprehensive plan of the city.
 - (E) The availability and capacity of existing and planned public and private services and facilities
 - (F) The need to shape the urban and suburban development
 - (G) The use of innovative development regulations and techniques.
- 103.11 Promote implementation of the Warwick Comprehensive Community Plan, as amended.
- 103.13 Provide for efficient review of development proposals, to clarify and expedite the zoning approval process.
- 103.14 Provide for procedures for the administration of the zoning ordinance

Planning Department Recommendation

The Planning Department's recommendation was for a favorable recommendation to the Warwick City Council for the requested zoning amendment.

A motion was made by Ms. Stenhouse to accept the Planning Department's finding and recommendation and to forward a favorable recommendation to the City Council for the requested zoning amendment. The motion was seconded by Mr. Desmarais. All voted in favor, none opposed.

Mr. Slocum made a motion to adjourn the meeting at 6:55pm. The motion was seconded by Mr. Gambardella. All voted in favor, none opposed.

Bond Reduction

Brookwood Estates Smile Court

Current bond total	\$10,331.00
<u>Amount to be released</u>	<u>\$10,331.00</u>
	Full Release

On the motion of Ms. Gerlach, seconded by Mr. Kiernan, the Planning Board voted unanimously to grant the requested bond reduction.

Administrative Subdivisions

The Administrative Subdivision was included for informational purposes.

Greco Plat Plat: 274 Lots: 259, 263 & 270

On the motion of Mr. Slocum, seconded by Ms. Prata, the Planning Board voted unanimously to adjourn the meeting at 6:35 PM.